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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/542,314	07/15/2005	William J Smirles	3994942	2682
7590 05/29/2009 Porter Wright Morris & Arthur 41 South High Street 28th Floor Columbus, OH 43215				
EXAMINER STOKLOS, JOSEPH A				
ART UNIT		PAPER NUMBER		
3762				
MAIL DATE		DELIVERY MODE		
05/29/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/542,314

**Applicant(s)**

SMIRLES ET AL.

**Examiner**

JOSEPH STOKLOSA

**Art Unit**

3762

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claim 1 and 7 contain the new limitation "means operative..." Examiner considers this limitation as unclear whether Applicant is intending to invoke USC 112 6<sup>th</sup> paragraph, since the limitation is not in "means for" language.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Olson et al. (US 6,029,085) in view of Hansen (US 6,662,046).

4. Olson discloses a portable automated external defibrillator with a housing, element 7, electrodes, 5, a battery, and connector for connecting the battery and electrodes to the defibrillator (e.g. Col. 4, line 33-57). Olson discloses an electrode stowage compartment, 13.

5. Olson fails to teach preventing application of battery power to the defibrillation circuitry, and a means for automatically connecting battery power to the defibrillator upon removal and deployment of the electrodes. Hansen teaches that it is known to prevent power to the defibrillation circuitry and automatically provide power to the circuitry when the unit is removed from a housing member as set forth in Col. 4, line 32-62, for providing the predictable results of automatic activation of the defibrillator unit after basic steps for use of the device are taken while also ensuring activation in spite of a user panicking and not being aware enough to activate a separate switch for activating the device. While Hansen teaches the automatic activation being designed around removal of the entire unit from a fixed housing, and not the removal of the electrodes from the unit housing, Examiner considers it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system as taught by Olson in view of Hansen with providing an automatic activation, where

power is disabled when the electrodes are within the housing and power is provided upon removal of the electrodes, since such a modification would provide the predictable results of automatic activation of the defibrillator unit after basic steps for use of the device are taken while also ensuring activation in spite of a user panicking and not being aware enough to activate a separate switch for activating the device, while also maintaining a level of portability since Hansen teaches the housing is fixed in a predetermined location.

6. Claims 4-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Olson in view of Hansen as applied above, and further in view of Owen (US 6,148,233).
7. Olson in view of Hansen disclose the invention as claimed except for a common housing of the electrodes and battery fitted to slidably mechanically and electrically engage the defibrillator with complementary upper and lower tray like recesses. Owen teaches that it is known to use a common housing of the electrodes and batter fitted to slidably engage the defibrillator with complementary upper and lower tray like recesses as set forth through elements 20 and 21 seen in Figs. 7B and 17 for providing the predictable results of providing an integral unit for minimizing connection or maintenance of multiple parts thereby reducing human error in a heightened stress environment of using the defibrillator. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system as taught by Olson in view of Hansen with a common housing of the electrodes and battery fitted to slidably mechanically and electrically engage the defibrillator with complementary upper and lower tray like recesses, since such a modification would provide the predictable

results of providing an integral unit for minimizing connection or maintenance of multiple parts thereby reducing human error in a heightened stress environment of using the defibrillator.

***Response to Arguments***

8. Applicant's arguments with respect to claims 1-9 have been considered but are moot in view of the new ground(s) of rejection necessitated by amendment.

***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOSEPH STOKLOSA whose telephone number is (571)272-1213. The examiner can normally be reached on Monday-Friday 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 571-272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/George R Evanisko/  
Primary Examiner, Art Unit 3762

Joseph Stoklosa  
Examiner  
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Examiner, Art Unit 3762  
5/20/2009